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and Perkins, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALAN HICKS, an individual; AARON HICKS, an individual; ROBERT RICHARDSON, an individual; TWIN HICKS, a joint venture,

**Plaintiffs.**

vs.

GREGORY PERKINS, an individual;  
PERKINS, INC., a corporation; and  
DOES 1-10, inclusive.

## Defendants.

) Case No. CV11-01894 PSG (JLGx)

{ ANSWER TO FIRST AMENDED  
{ COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
  2. BREACH OF CONTRACT;
  3. ACCOUNTING;
  4. UNFAIR BUSINESS PRACTICES  
(CIVIL CODE SECTION 17200)
  5. UNAUTHORIZED USE OF NAME  
(CIVIL CODE SECTION 3344);
  6. VIOLATION OF LANHAM ACT;
  7. COMMON LAW TORTS AND  
FALSE ADVERTISING AND UNFAIR  
COMPETITION

Defendants Gregory Perkins and Perkins, Inc. (collectively, "Defendants") answer the First Amended Complaint, for themselves and no others, as follows:

## JURISDICTION

1. Defendants admit that plaintiffs allege a claim for copyright

1 infringement, which arises under Titles 17 and 28 of the United States Code, and  
2 alleges state law claims.

3 PARTIES AND VENUE

4 2. Defendants admit that Aaron Hicks is an individual.

5 3. Defendants admit that Alan Hicks is an individual.

6 4. Defendants admit that Robert Richardson is an individual residing in  
7 the State of California.

8 5. Defendants have no information or belief sufficient to enable them to  
9 answer the allegations of paragraph 5 and, basing their denial on that ground,  
10 deny generally and specifically each and every allegation.

11 6. Defendants admit that Gregory Perkins is, and at relevant times was,  
12 an individual conducting business in the State of California and within the Central  
13 District of California.

14 7. Defendants admit that Perkins, Inc. is a corporation organized under  
15 the laws of the State of California and conducts, and at all relevant times  
16 conducted, business in the State of California and within the Central District of  
17 California. Defendants deny generally and specifically all other allegations of  
18 paragraph 7.

19 8. Defendants have no information or belief sufficient to enable them to  
20 answer the allegations of paragraph 8 and, basing their denial on that ground,  
21 deny generally and specifically each and every allegation.

22 9. Defendants deny generally and specifically each and every allegation  
23 of paragraph 9.

24 10. Defendants admit the allegation in paragraph 10.

25 11. Defendants admit that Defendants reside, or their agents may be  
26 found, in the Central District of California. Defendants admit that Defendants  
27 conduct, and at all relevant times, conducted business within the Central District  
28 of California. Defendants deny generally and specifically all other allegations of

paragraph 11.

**FIRST CLAIM FOR RELIEF**  
**FOR COPYRIGHT INFRINGEMENT**  
**(By All Plaintiffs Against All Defendants)**

12. Defendants repeat and incorporate by reference the allegations of paragraphs 1 through 11 above as if fully set forth herein.

13. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 13 and, basing their denial on that ground, deny generally and specifically each and every allegation.

14. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 14 and, basing their denial on that ground, deny generally and specifically each and every allegation.

15. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 15 and, basing their denial on that ground, deny generally and specifically each and every allegation.

16. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 16 and, basing their denial on that ground, deny generally and specifically each and every allegation.

17. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 17 and, basing their denial on that ground, deny generally and specifically each and every allegation.

18. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 18 and, basing their denial on that ground, deny generally and specifically each and every allegation.

19. Defendants admit that Alan Hicks and Aaron Hicks duly licensed and authorized Robert Richardson and Twin Hicks to license the publication of works at issue in Plaintiff's first amended complaint. Defendants admit that Robert Richardson and Twin Hicks entered into various written agreements with the

1 Defendants authorizing the Defendants to publish, manufacture, distribute and  
2 sell a variety of products incorporating the works at issue in Defendant's first  
3 amended complaint. The Defendants deny generally and specifically each and  
4 every remaining allegation of paragraph 19.

5 20. Defendants deny generally and specifically each and every allegation  
6 of paragraph 20.

7 21. Defendants deny generally and specifically each and every allegation  
8 of paragraph 21.

9 22. Defendants deny generally and specifically each and every allegation  
10 of paragraph 22.

11 23. Defendants deny generally and specifically each and every allegation  
12 of paragraph 23.

13 24. Defendants deny generally and specifically each and every allegation  
14 of paragraph 24.

15 25. Defendants deny generally and specifically each and every allegation  
16 of paragraph 25.

17 26. Defendants deny generally and specifically each and every allegation  
18 of paragraph 26.

19 27. Defendants deny generally and specifically each and every allegation  
20 of paragraph 27.

21 **SECOND CLAIM FOR RELIEF**

22 **FOR BREACH OF CONTRACT**

23 **(By Plaintiffs Richardson and Twin Hicks Against All Defendants)**

24 28. Defendants repeat and incorporate by reference the allegations of  
25 paragraphs 1 through 27 above as if fully set forth herein.

26 29. Defendants admit the allegations of paragraph 29.

27 30. Defendants deny generally and specifically each and every allegation  
28 of paragraph 30.

31. Defendants deny generally and specifically each and every allegation of paragraph 31.

32. Defendants deny generally and specifically each and every allegation of paragraph 32.

33. Defendants deny generally and specifically each and every allegation of paragraph 33.

## THIRD CLAIM FOR RELIEF

## ACCOUNTING

(By All Plaintiffs Against All Defendants)

34. Defendants repeat and incorporate by reference the allegations of paragraphs 1 through 33 above as if fully set forth herein.

35. Defendants deny generally and specifically each and every allegation of paragraph 35.

## FOURTH CLAIM FOR RELIEF

# BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.

**(By All Plaintiffs Against All Defendants)**

36. Answering defendants repeat and incorporate by reference the allegations of paragraphs 1 through 36 above as if fully set forth herein.

37. Defendants deny generally and specifically each and every allegation of paragraph 37.

38. Defendants deny generally and specifically each and every allegation of paragraph 38.

39. Defendants deny generally and specifically each and every allegation of paragraph 39.

40. Defendants deny generally and specifically each and every allegation of paragraph 40.

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## FIFTH CLAIM FOR RELIEF

# UNAUTHORIZED USE OF NAME OR LIKENESS

# CALIFORNIA CIVIL CODE SECTION 3344

(By All Plaintiffs Against All Defendants)

41. Defendants repeat and incorporate by reference the allegations of paragraphs 1 through 40 above as if fully set forth herein.

42. Defendants deny generally and specifically each and every allegation of paragraph 42.

43. Defendants deny generally and specifically each and every allegation of paragraph 43.

44. Defendants deny generally and specifically each and every allegation of paragraph 44.

45. Defendants deny generally and specifically each and every allegation of paragraph 45.

## SIXTH CLAIM FOR RELIEF

## VIOLATION OF LANHAM ACT

## 11 U.S.C. § 1125, ETC.

(By All Plaintiffs Against All Defendants)

46. Defendants repeat and incorporate by reference

paragraphs 1 through 45 above as if fully set forth herein.

47. Defendants deny generally and specifically each and every allegation of paragraph 47.

48. Defendants deny generally and specifically each and every allegation of paragraph 48.

49. Defendants deny generally and specifically each and every allegations of paragraph 49.

50. Defendants deny generally and specifically each and every allegations of paragraph 50.

## SEVENTH CLAIM FOR RELIEF

# COMMON LAW TORTS OF FALSE ADVERTISING AND UNFAIR COMPETITION

(By All Plaintiffs Against All Defendants)

51. Defendants repeat and incorporate by reference the allegations of paragraphs 1 through 50 above as if fully set forth herein.

52. Defendants deny generally and specifically each and every allegations of paragraph 52.

53. Defendants deny generally and specifically each and every allegations of paragraph 53.

54. Defendants deny generally and specifically each and every allegation of paragraph 54.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

## (Failure to State a Claim)

As and for an affirmative defense to all claims for relief, Defendants allege:

55. The First Amended Complaint, and each purported claim for relief contained therein, fails to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

## (Failure to State a Claim)

As and for an affirmative defense to all claims for relief, Defendants allege:

56. Plaintiffs have failed to state a claim upon which they can recover attorneys' fees, punitive damages, or costs.

## THIRD AFFIRMATIVE DEFENSE

(Waiver)

As and for an affirmative defense to all claims for relief, Defendants allege:

57. By reasons of Plaintiffs' conduct, Plaintiffs have waived their right to assert each and all claims alleged in the First Amended Complaint.

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## FOURTH AFFIRMATIVE DEFENSE

### (Estoppel)

As and for an affirmative defense to all claims for relief, Defendants allege:

58. By reason of Plaintiffs' conduct, Plaintiffs are estopped to assert each and all of the claims alleged in the First Amended Complaint.

## FIFTH AFFIRMATIVE DEFENSE

### (Unclean Hands)

As and for an affirmative defense to all claims for relief, Defendants allege:

59. By reason of Plaintiffs' acts and conduct in the matters which are the subject of the First Amended Complaint, Plaintiffs are barred from obtaining the relief sought in the First Amended Complaint, or any other relief whatsoever, by virtue of the doctrine of unclean hands.

## SIXTH AFFIRMATIVE DEFENSE

### (Laches)

As and for an affirmative defense to all claims for relief, Defendants allege:

60. By reason of Plaintiffs' acts and conduct in the matters which are the subject of the First Amended Complaint, Plaintiffs are barred from obtaining the relief sought in the First Amended Complaint, or any other relief whatsoever, by virtue of the doctrine of laches.

## SEVENTH AFFIRMATIVE DEFENSE

(License)

As and for an affirmative defense to all claims for relief, Defendants allege:

61. Plaintiffs' claims are barred because Defendants have a license to copy, reproduce, distribute, publicly display, and create derivative works of the artistic works which are the subject of the First Amended Complaint.

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1                   EIGHTH AFFIRMATIVE DEFENSE

2                   (Statutes of Limitation)

3                   As and for an affirmative defense to all claims for relief, Defendants allege:

4                 62. Plaintiffs' claims are barred by the applicable statutes of limitation,  
5 including, but not limited to, Code of Civil Procedure section 339.

6                   NINTH AFFIRMATIVE DEFENSE

7                   (Failure to Mitigate)

8                   As and for an affirmative defense to all claims for relief, Defendants allege:

9                 63. The purported damages sought by Plaintiffs were proximately caused  
10 by Plaintiffs' failure to mitigate damages.

11                  TENTH AFFIRMATIVE DEFENSE

12                  (Lack of Standing)

13                  As and for an affirmative defense to all claims for relief, Defendants allege:

14                 64. Plaintiffs lack standing to seek the requested relief against  
15 Defendants based on the matters of which Plaintiffs complain.

16                  ELEVENTH AFFIRMATIVE DEFENSE

17                  (Failure to Do Equity)

18                  As and for an affirmative defense to all claims for relief, Defendants allege:

19                 65. No relief may be obtained under the First Amended Complaint by  
20 reason of Plaintiffs' failure to do equity in the matters alleged in the First  
21 Amended Complaint.

22                  TWELFTH AFFIRMATIVE DEFENSE

23                  (Consent)

24                  As and for an affirmative defense to all claims for relief, Defendants allege:

25                 66. Plaintiffs consented to and approved all of the acts and omissions  
26 about which Plaintiffs now complain.

27                 ///

28                 ///

## THIRTEENTH AFFIRMATIVE DEFENSE

### (Ratification)

As and for an affirmative defense to all claims for relief, Defendants allege:

67. Plaintiffs approved of, acquiesced in, or otherwise ratified the actions of Defendants, and Plaintiffs are therefore barred from any recovery under the First Amended Complaint.

## FOURTEENTH AFFIRMATIVE DEFENSE

(Frustration of Purpose)

As and for an affirmative defense to all claims for relief, Defendants allege:

68. Plaintiffs are barred from obtaining relief sought in the First Amended Complaint, or any relief whatsoever, because Plaintiffs' enforcement of these alleged requirements serves to frustrate the purpose of the relevant agreements.

## FIFTEENTH AFFIRMATIVE DEFENSE

#### (Plaintiff and Third-Party Actions)

As and for an affirmative defense to all claims for relief, Defendants allege:

69. Plaintiffs are barred from any recovery under the First Amended Complaint by virtue of the fact that any loss or damage sustained by Plaintiffs was caused solely, directly, and proximately by the intentional conduct, errors, faults, negligence, omissions, and breaches of obligations, by persons or entities other than Defendants, including, without limitation, Plaintiffs.

## SIXTEENTH AFFIRMATIVE DEFENSE

## (Failure to Mitigate)

As and for an affirmative defense to all claims for relief, Defendants allege:

70. Plaintiffs have failed to mitigate their damages, if any, through the exercise of reasonable diligence, and Plaintiffs are therefore precluded from any recovery under the First Amended Complaint.

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# SEVENTEENTH AFFIRMATIVE DEFENSE

## (Privilege and Justification)

As and for an affirmative defense to all claims for relief, Defendants allege:

71. Plaintiffs are barred from obtaining the relief sought in the First Amended Complaint, or any relief whatsoever, because Defendants' conduct as alleged in the First Amended Complaint was legally privileged and/or justified.

## EIGHTEENTH AFFIRMATIVE DEFENSE

(Improper Purpose)

As and for an affirmative defense to all claims for relief, Defendants allege:

72. The First Amended Complaint is presented for an improper purpose, including, but not limited to, harassing Defendants and/or abusing the process of law.

## **NINETEENTH AFFIRMATIVE DEFENSE**

(Prevention of Performance)

As and for an affirmative defense to all claims for relief, Defendants allege:

73. Plaintiffs breached the contract with Defendants by failing to timely, fully, and adequately perform the terms and conditions therein, thereby preventing Defendants' performance and discharging any obligations on the part of Defendants.

# TWENTIETH AFFIRMATIVE DEFENSE

(Detrimental Reliance)

As and for an affirmative defense to all claims for relief, Defendants allege:

74. By Plaintiffs' own acts, conduct, and representations, which were relied upon by Defendants to their detriment, Plaintiffs are estopped from seeking the recovery alleged in the First Amended Complaint.

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## TWENTY-FIRST AFFIRMATIVE DEFENSE

### (Unjust Enrichment)

As and for an affirmative defense to all claims for relief, Defendants allege:

75. Defendants allege that, by Plaintiffs' own acts, conduct, and representations, Plaintiffs have been or will be unjustly enriched and are therefore estopped from seeking the recovery alleged in the First Amended Complaint.

## TWENTY-SECOND AFFIRMATIVE DEFENSE

(Unconsciousability)

As and for an affirmative defense to all claims for relief, Defendants allege:

76. Plaintiffs are barred from recovering the relief sought in the Complaint, or any relief whatsoever, by the doctrine of unconscionability as set forth in section 1670.5 of the California Civil Code.

## TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unforeseeability)

As and for an affirmative defense to all claims for relief, Defendants allege:

77. Plaintiffs' damages, if any, are barred because they were unforeseeable to Defendants.

## **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

#### **(Excuse/Discharge of Obligations)**

As and for an affirmative defense to all claims for relief, Defendants allege:

78. Plaintiffs are barred from recovering the relief sought in the First Amended Complaint, or any relief whatsoever, as any obligation to perform on the part of Defendants was excused and/or discharged.

## TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Fraud)

As and for an affirmative defense to all claims for relief, Defendants allege:

79. Plaintiffs are barred from obtaining the relief sought in the First Amended Complaint, or any other relief whatsoever, because they have

1 defrauded Defendants.

2 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

3 **(Good Faith and Fair Dealing)**

4 As and for an affirmative defense to all claims for relief, Defendants allege:

5 80. Plaintiffs are barred from obtaining the relief sought in the First  
6 Amended Complaint, or any relief whatsoever, because Plaintiffs violated the  
7 covenant of good faith and fair dealing.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 **(Lack of Justiciability)**

10 As and for an affirmative defense to all claims for relief, Defendants allege:

11 81. Plaintiffs are barred from obtaining the relief sought in the First  
12 Amended Complaint, or any other relief whatsoever, because they have suffered  
13 no injury and, therefore, there is no justiciability to Plaintiffs' claims.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 **(Plaintiff's Breach)**

16 As and for an affirmative defense to all claims for relief, Defendants allege:

17 82. Plaintiffs are barred from obtaining the relief sought in the First  
18 Amended Complaint, or any other relief whatsoever, because Plaintiffs breached  
19 the written agreements.

20 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

21 **(Release)**

22 As and for an affirmative defense to all claims for relief, Defendants allege:

23 83. Defendants allege that Plaintiffs' actions, with full knowledge of all  
24 the facts, constituted a full release and waiver by Plaintiffs of any and all claims  
25 Plaintiffs may have against Defendants.

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27 ///

28 ///

THIRTIETH AFFIRMATIVE DEFENSE  
(Offset)

As and for an affirmative defense to all claims for relief, Defendants allege:

84. Defendants deny that Plaintiffs are entitled to any relief under the First Amended Complaint. However, if Plaintiffs are found to be entitled to any recovery from Defendants, Defendants are entitled to an offset.

# THIRTY-FIRST AFFIRMATIVE DEFENSE

## (Failure of Consideration)

As and for an affirmative defense to all claims for relief. Defendants allege:

85. Plaintiffs are barred from recovering any damages or other relief by reason of the failure of consideration that defeats the effectiveness of the contract between the parties.

## THIRTY-SECOND AFFIRMATIVE DEFENSE

### (Failure of Condition Precedent)

As and for an affirmative defense to all claims for relief. Defendants allege:

86. Plaintiffs' First Amended Complaint is barred in whole or in part because Plaintiffs have failed to satisfy conditions precedent found in the contract(s), if any, upon which Plaintiffs seek relief.

## THIRTY-THIRD AFFIRMATIVE DEFENSE

### (Illusory Promise)

As and for an affirmative defense to all claims for relief. Defendants allege:

87. Plaintiffs' claims are barred because all promises comprising the alleged contract upon which Plaintiffs rely for recovery were illusory.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**  
**(Modification)**

As and for an affirmative defense to all claims for relief. Defendants allege:

88. Plaintiffs are entitled to no relief because the contractual obligations alleged in the First Amended Complaint were modified, terminated, or canceled

1 by the parties.

2 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

3 **(Novation)**

4 As and for an affirmative defense to all claims for relief, Defendants allege:

5 89. Plaintiffs' claims are barred in whole or in part under the doctrine of  
6 novation.

7 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

8 **(Additional Affirmative Defenses)**

9 As and for an affirmative defense to all claims for relief, Defendants allege:

10 90. Defendants currently have insufficient knowledge or information  
11 upon which to form a belief as to whether they may have additional, as yet  
12 unstated, affirmative defenses available. Defendants reserve the right to assert  
13 additional affirmative defenses in the event that discovery indicates that they  
14 would be appropriate.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Defendants pray:

17 1. that Plaintiffs take nothing from answering defendants by reason of  
18 the First Amended Complaint;

19 2. for dismissal of Plaintiffs' First Amended Complaint on all counts;

20 3. that Defendants recover their costs of suit incurred in the defense of  
21 Plaintiffs' First Amended Complaint;

22 4. that Defendants be awarded their attorneys' fees, costs, and other  
23 expenses incurred in the defense of Plaintiffs' First Amended Complaint; and

24 ///

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26 ///

27 ///

28 ///

1       5. for such other and further relief as the Court deems proper.  
2  
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Dated: November 9, 2011

Respectfully submitted,

WEINTRAUB GENSHLEA CHEDIAK  
Law Corporation

6       By: /s/ Scott M. Plamondon  
7                   Scott M. Plamondon  
8                   State Bar No. 212294  
9

10                  Attorneys for Defendants  
11                  Gregory Perkins and Perkins, Inc.